

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHNNY L. WARNER AND)
MARY WARNER)
Plaintiffs,)
vs.)
DILLARD'S INC., THE ESTEE LAUDER)
COMPANIES, INC., ESTEE LAUDER, INC.)
AND ESTEE LAUDER SERVICES, INC.,)
Defendants.)

Case No. 4:05CV664MLM

ORDER

This matter is before the court on Dillard's, Inc.'s ("Dillard's") Motion to Dismiss for Failure to Prosecute. [Doc. 12, 13] Plaintiffs did not respond to the Motion. A hearing on the Motion was scheduled on October 28, 2005.¹ Dillard's was represented by counsel, David Fedder and Thomas Rea. Counsel for plaintiffs failed to appear.

Dillard's Motion and Memorandum in Support set out fully the grounds for requesting dismissal for failure to prosecute. Counsel for Dillard's made a full and complete record at the hearing. Repeating the reasons in this Order would serve no useful purpose. Dillard's Motion and Memorandum are incorporated by reference as if fully set out herein. None of Dillard's grounds has been contested by plaintiffs in any way.

Plaintiff's Complaint was filed April 26, 2005. In spite of the court's September 13, 2005 Show Cause Order to which plaintiffs did not respond, plaintiffs have failed to serve the three Estee Lauder defendants.²

Plaintiffs have failed to comply with the court's Case Management Order. Plaintiffs have failed to comply with discovery in any meaningful way. Therefore, pursuant to Rules 41(b) and

¹ Court records show that all counsel received electronic notice of the hearing.

² The three Estee Lauder defendants are The Estee Lauder Companies, Inc., Estee Lauder, Inc. and Estee Lauder Services, Inc.

37(d) of the Federal Rules of Civil Procedures and the reasons set out in Dillard's Memorandum in Support, the court will dismiss plaintiffs' case.

Accordingly,

IT IS HEREBY ORDERED that Dillard's Motion to Dismiss for Failure to Prosecute is **GRANTED**. [Doc. 12]

IT IS FURTHER ORDERED that this case is dismissed in its entirety with prejudice.

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 31st day of October, 2005.